

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CHARLES KOCH,)	CASE NO.: 1:24-CV-00031-CAB
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
v.)	
)	<u>DEFENDANTS LORAIN COUNTY,</u>
LORAIN COUNTY, et al.,)	<u>OHIO/LORAIN COUNTY BOARD OF</u>
)	<u>COMMISSIONERS, SHERIFF PHIL</u>
Defendants.)	<u>STAMMITT, AND LIEUTENANT MIKE</u>
)	<u>CRUM'S ANSWER TO PLAINTIFF'S</u>
)	<u>COMPLAINT</u>

NOW COME Defendants, Lorain County, Ohio and Lorain County Board of Commissioners, Sheriff Phil Stammitti, and Lieutenant Mike Crum (hereinafter “Defendants”), by and through undersigned counsel, and for their Answer to Plaintiff’s Complaint, hereby state as follows:

I - INTRODUCTION

1. Responding to Paragraph 1 of Plaintiff’s Complaint, these Defendants deny that there was a failure to properly hire and train officers, and deny that the policies, procedures, customs, and habits of the officers in the Lorain County Jail are a contributing factor to any injury suffered by Plaintiff. Further answering Paragraph 1 of Plaintiff’s Complaint these Defendants deny or deny for want of knowledge each and every and all remaining allegations contained therein and deny that they are liable for any injury suffered by Plaintiff.

2. Answering Paragraph 2 of Plaintiff’s Complaint these Defendants deny or deny for want of knowledge any and/or all allegations contained therein and deny that they violated any of Plaintiff’s rights and deny that their actions caused any injury to the Plaintiff.

3. These Defendants deny all allegations contained in Paragraphs 3 and 4 of Plaintiff’s Complaint.

II - JURISDICTION

4. Responding to Paragraph 5 of Plaintiff's Complaint, these Defendants admit that the statutes contained therein speak for themselves. Further responding to said Paragraph 5, these Defendants deny any and all allegations not expressly admitted herein and deny any and all liability in this matter.

II - PARTIES

5. These Defendants deny for want of information all allegations contained in Paragraph 6 of Plaintiff's Complaint. Further answering Paragraph 6 these Defendants deny that they violated any of Plaintiff's rights under State or Federal Law.

6. Responding to Paragraph 7 of Plaintiff's Complaint, these Defendants admit that Lorain County is a unit of local government organized under the laws of the State of Ohio, that it is a "Person" under 42 USC 1983, and that at all times relevant acted under color of law. Further responding to said Paragraph 7, this Defendant denies or denies for want of information all remaining allegations contained therein.

7. Responding to Paragraph 8 of Plaintiff's Complaint, these Defendants admit that Defendant Phil R. Stammitti was the duly elected Sheriff of Lorain County at all times relevant and until January 1, 2024, that he is a "person" under 42 USC 1983, at all times relevant to this case acted under the color of law, and was a policy maker with respect to customs, practices, policies, and procedures of the Lorain County jail. Further responding to said Paragraph 8, this Defendant denies or denies for want of information all remaining allegations contained therein.

8. Responding to Paragraph 9 of Plaintiff's Complaint, these Defendants admit that Defendant Mike Crum is a Lieutenant for the Lorain County Sheriff's Office, is a "person" under 42 USC 1983 at all times relevant to this case, and that he acted under color of law. Further

responding to said Paragraph 9, these Defendants deny or deny for want of information all remaining allegations contained therein.

9. Responding to Paragraph 10 of Plaintiff's Complaint, these Defendants admit that Ruben Ortiz is a "person" under 42 USC 1983. Further responding to said Paragraph 10, these Defendants deny or deny for want of information all remaining allegations contained therein.

10. These Defendants deny for want of information all allegations contained in Paragraph 11 of Plaintiff's Complaint.

IV - FACTS

11. These Defendants admit, upon information and belief, all allegations contained in Paragraph 12 of Plaintiff's Complaint.

12. These Defendants deny for want of information all allegations contained in Paragraphs 13 and 14 of Plaintiff's Complaint.

13. These Defendants admit, upon information and belief, all allegations contained in Paragraphs 15 and 16 of Plaintiff's Complaint.

14. These Defendants deny or deny for want of information all allegations contained in Paragraph 17 of Plaintiff's Complaint.

15. These Defendants deny all allegations contained in Paragraph 18 of Plaintiff's Complaint.

16. Responding to Paragraph 19 of Plaintiff's Complaint, these Defendants admit that Rubin Ortiz was preparing Plaintiff for transport on August 25, 2023. Further responding to said Paragraph 19, these Defendants deny all remaining allegations contained therein.

17. These Defendants deny or deny for want of information all allegations contained in Paragraphs 20 and 21 of Plaintiff's Complaint.

18. Responding to Paragraph 22 of Plaintiff's Complaint, these Defendants admit that Ruben Ortiz was written up in 2013, and that in one performance evaluation, part of a "raters comments" noted "at time uses bad judgment when dealing with residents." Further responding to said Paragraph 22, these Defendants admit that one evaluator noted that Ruben Ortiz "tends to let his emotions override good judgment." Further responding to said Paragraph 22, these Defendants deny or deny for want of information all remaining allegations contained therein.

19. These Defendants admit all allegations contained in Paragraph 23 of Plaintiff's Complaint.

20. These Defendants deny for want of information all allegations contained in Paragraph 24 of Plaintiff's Complaint.

21. These Defendants deny or deny for want of information all allegations contained in Paragraphs 25 and 26 of Plaintiff's Complaint.

22. Responding to Paragraph 27 of Plaintiff's Complaint, these Defendants admit that Ruben Ortiz was terminated from his employment by the Lorain County Sheriff's Office as a result of the incident at bar. Further responding to said Paragraph 27, these Defendants deny for want of information all remaining allegations contained therein.

23. These Defendants deny for want of information all allegations contained in Paragraph 28 of Plaintiff's Complaint.

24. These Defendants deny all allegations contained in Paragraphs 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 of Plaintiff's Complaint.

V – CAUSES OF ACTION

COUNT 1 – SECTION 1983: EXCESSIVE FORCE (Defendant Ruben Ortiz)

25. Responding to Paragraph 44 of Plaintiff's Complaint, these Defendants incorporate herein all admissions, denials, and averments set forth in Paragraphs 1-24 of this Answer as if fully restated herein.

26. These Defendants deny all allegations contained in Paragraphs 45, 46, and 47 of Plaintiff's Complaint.

COUNT 2: ASSAULT AND BATTERY (Defendant Ruben Ortiz and John Does 1-3)

27. Responding to Paragraph 48 of Plaintiff's Complaint, these Defendants incorporate herein all admissions, denials, and averments set forth in Paragraphs 1-26 of this Answer as if fully restated herein.

28. These Defendants deny all allegations contained in Paragraphs 49, 50, 51, 52, and 53 of Plaintiff's Complaint.

29. These Defendants deny for want of information all allegations contained in Paragraph 54 of Plaintiff's Complaint.

30. These Defendants deny all allegations contained in Paragraphs 55 and 56 of Plaintiff's Complaint.

COUNT 3: CLAIM PURSUANT TO MONELL
(Defendants Lorain County, Ohio and Lorain County Board of Commissioners,
Sheriff Phil R. Stammitti, and Lieutenant Mike Crum)

31. Responding to Paragraph 57 of Plaintiff's Complaint, these Defendants incorporate herein all admissions, denials, and averments set forth in Paragraphs 1-30 of this Answer as if fully restated herein.

32. These Defendants deny all allegations contained in Paragraphs 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 68 of Plaintiff's Complaint.

COUNT 4: SPOILIATION (All Defendants)

33. Responding to Paragraph 69 of Plaintiff's Complaint, these Defendants incorporate all admissions, denials, and averments set forth in Paragraphs 1-32 of this Answer as if fully restated herein.

34. These Defendants deny all allegations contained in Paragraph 70 of Plaintiff's Complaint.

35. Responding to Paragraph 71 of Plaintiff's Complaint, these Defendants admit that they did not take any photographs of Plaintiff following the incident at bar. Further responding to said Paragraph 71, these Defendants deny all remaining allegations contained therein.

36. These Defendants deny all allegations contained in Paragraph 72 of Plaintiff's Complaint.

37. These Defendants admit all allegations contained in Paragraph 73 of Plaintiff's Complaint.

38. These Defendants deny all allegations contained in Paragraph 74 of Plaintiff's Complaint.

COUNT 5: GROSS NEGLIGENCE
(Defendants Lorain County, Ohio and Lorain County Board of Commissioners,
Sheriff Phil R. Stammitti, and Lieutenant Mike Crum)

39. Responding to Paragraph 75 of Plaintiff's Complaint, these Defendants incorporate herein all admissions, denials, and averments set forth in Paragraphs 1-38 of this Answer as if fully restated herein.

40. These Defendants deny all allegations contained in Paragraphs 76, 77, 78, 79, and 80 of Plaintiff's Complaint.

COUNT 6: GROSS NEGLIGENCE (Defendants John Doe 1-3)

41. Responding to Paragraph 81 of Plaintiff's Complaint, these Defendants incorporate herein all admissions, denials, and averments set forth in Paragraphs 1-40 of this Answer as if fully restated herein.

42. These Defendants deny for want of information all allegations contained in Paragraphs 82, 83, 84, 85, 86, 87, and 88 of Plaintiff's Complaint.

43. Responding to Plaintiff's Prayer for Relief, these Defendants deny any and all liability in this matter. Further answering said prayer for relief, these Defendants state that some of the remedies for which Plaintiff prays are not available under the law. Further answering said prayer for relief, these Defendants deny all allegations not explicitly admitted herein, and deny that Plaintiff is entitled to any of the relief sought.

AFFIRMATIVE DEFENSES

44. These Defendants restate all of the admissions, denials, and averments set forth in Paragraphs 1-43 of this Answer as if fully restated herein.

FIRST DEFENSE

45. Plaintiff's Complaint fails to state a claim upon which relief may be granted in some or all respects.

SECOND DEFENSE

46. Some or all of these Defendants are not *sui juris*.

THIRD DEFENSE

47. Some of these Defendants are entitled to qualified immunity.

FOURTH DEFENSE

48. These Defendants are entitled to all immunities, damage limitations, damage setoffs, and other benefits conferred upon them by RC Chapter 2744 and/or Ohio common law by reason of their status as a political subdivision or employees of a political subdivision of the State of Ohio.

FIFTH DEFENSE

49. Plaintiff's alleged damages are barred, in whole or in part, because they are the result of Plaintiff's own acts or omissions and/or the acts or omissions of others over whom these Defendants have no authority or control, for which these Defendants have no responsibility.

SIXTH DEFENSE

50. Plaintiff has failed to mitigate his damages.

SEVENTH DEFENSE

51. Assumption of risk.

EIGHTH DEFENSE

52. These Defendants did not owe a duty of care to Plaintiff.

NINTH DEFENSE

53. Plaintiff has failed to exhaust his administrative remedies.

54. These Defendants reserve the right to assert additional defenses as discovery occurs and the case progresses.

Respectfully submitted,

/s/ Amily A. Imbrogno

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Phil Stammitti, and Lieutenant Mike Crum*

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024, the foregoing Defendants' Answer to Plaintiff's Complaint was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ Amily A. Imbrogno

DAVID M. SMITH (0079400)

AMILY A. IMBROGNO (0092434)

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Lorain County Board of Commissioners, Sheriff Phil
Stammitti, and Lieutenant Mike Crum*